

PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298



December 9, 2002

Agenda ID #1498

TO: PARTIES OF RECORD IN APPLICATION 98-07-003

This is the proposed decision of Administrative Law Judge (ALJ) Barnett, previously designated as the principal hearing officer in this proceeding. It will not appear on the Commission's agenda for at least 30 days after the date it is mailed. This matter was categorized as ratesetting and is subject to Pub. Util. Code § 1701.3(c). Pursuant to Resolution ALJ-180, a Ratesetting Deliberative Meeting to consider this matter may be held upon the request of any Commissioner. If that occurs, the Commission will prepare and mail an agenda for the Ratesetting Deliberative Meeting 10 days before hand, and will advise the parties of this fact, and of the related ex parte communications prohibition period.

The Commission may act at the regular meeting, or it may postpone action until later. If action is postponed, the Commission will announce whether and when there will be a further prohibition on communications.

When the Commission acts on the proposed decision, it may adopt all or part of it as written, amend or modify it, or set it aside and prepare its own decision. Only when the Commission acts does the decision become binding on the parties.

Parties to the proceeding may file comments on the proposed decision as provided in Article 19 of the Commission's "Rules of Practice and Procedure." These rules are accessible on the Commission's website at <http://www.cpuc.ca.gov>. Pursuant to Rule 77.3 opening comments shall not exceed 15 pages. Finally, comments must be served separately on the ALJ and the assigned Commissioner, and for that purpose I suggest hand delivery, overnight mail, or other expeditious method of service.

/s/ Carol Brown

Carol Brown, Interim Chief
Administrative Law Judge

CAB: avs

Decision **PROPOSED DECISION OF ALJ BARNETT** (Mailed 12/9/2002)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company
for Verification, Consolidation, and Approval of
Costs and Revenues in the Transition Revenue
Account.

Application 98-07-003
(Post PX Direct Access Credits)
(Petition Filed August 19, 2002)

**OPINION DENYING PETITION FOR
MODIFICATION OF DECISION 02-07-032**

The Newark Group, Inc. (The Newark Group) petitions for modification of Decision (D.) 02-07-032, on the grounds that the decision is erroneous in that it applies the surcharge imposed on direct access customers to uniquely-positioned customers such as The Newark Group who did not contribute to Southern California Edison Company's (Edison) historical undercollection and who were forced onto direct access by Edison's failure to live up to its own contractual obligations. Edison opposes.

The Petition for Modification is denied. Even if all the allegations of the petition were true they are irrelevant. We will not create exceptions to a tariff for specific customers or groups on the ground that they were not customers when a particular cost was incurred. Such exemptions are inappropriate. For example, any direct access customer who started operation in Edison's service territory in the summer of 2001 could make a similar claim for exemption. This is the same claim that a new customer could make with respect to the recovery of fuel cost undercollections under the Energy Cost Adjustment Clause (ECAC) of the past years. Once the Commission adopts a billing factor, it becomes applicable to all

customers, even those who were not taking service from the utility when the undercollections were actually incurred. To carve out special exemptions for special interests, will promote requests by various “uniquely situated” customers who want to evade their obligations to pay the tariff.

Carl Wood is the Assigned Commissioner and Robert Barnett is the assigned Administrative Law Judge (ALJ) in this proceeding.

The proposed decision of the ALJ was mailed to the parties in accordance with Pub. Util. Code § 311(d) and Rule 77.1 of the Rules of Practice and Procedure. Comments were received _____.

Finding of Fact

1. A cost whenever incurred which is included by the Commission in a tariff charge is applicable to all customers taking service under that tariff regardless of when the customer began service.

Conclusion of Law

1. The petition should be denied.

O R D E R

IT IS ORDERED that:

1. The petition for modification is denied.
2. This order is effective today.

Dated _____, at San Francisco, California.